

Remarks

The specification and the claims have been amended to clarify the nature of the exfoliant ingredient in light of the Examiner's inquiry about the meaning of the term "polyvinol crystals." The term "polyvinol" is known in the art as a synonym for polyvinyl alcohol, although its use was more common in the past. Enclosed are pages from Material Safety Data Sheets of Mallinckrodt Baker, Inc., the University of Iowa and Aldrich Chemical Co. listing polyvinol among the synonyms for polyvinyl alcohol. Also enclosed is the polyvinyl alcohol section of the U.S. National Institutes of Health's National Toxicology Program (NTP), showing polyvinol as a synonym for polyvinyl alcohol.

The Mallinckrodt MSDS refers to polyvinyl alcohol as granules (see p. 4 of 7) and the Aldrich MSDS refers to it as crystalline powder (see p. 2 of 4, bottom). The term polyvinyl alcohol crystals is understood in the art to mean this crystalline powder.

The Examiner has rejected Claims 1-4 because they claim a "composition" that consists of two separated compilations. The amendment makes clear that the invention claims a novel overall formulation which is a combination of separate compositions to be used in sequence. This amendment is, as pointed out by the Examiner, supported by pages 10-14 of the specification.

Claims 4 – 6 have been cancelled and certain limitations of Claim 8 have been imported into Claim 7. Applicant respectfully submits that the formulations in the claims are not rendered obvious by the art cited by the Examiner. Robinson et al. discloses a combination of a vitamin B3 compound, a skin care active selected from farnesol, phytantriol, and mixtures thereof, and a

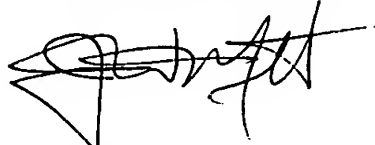
dermatologically acceptable carrier. Robinson et al. also discloses adding one or more of a variety of skin care actives, although none of the actives or the carriers appears to include an exfoliant.

More particularly, Robinson et al. does not teach a formulation comprising a first phase composition comprising an effective amount of an antibacterial ingredient, an effective amount of an anti-inflammatory ingredient, an effective amount of a humectant ingredient, an effective amount of an antioxidant ingredient, and an effective amount of an exfoliant ingredient; and a separate second phase composition comprising an effective amount of an anti-inflammatory ingredient, an effective amount of a circulatory enhancement ingredient, and an effective amount of a prolonged moisturization ingredient. Nor does Robinson et al. teach a composition comprising an effective amount of an anti-inflammatory ingredient, an effective amount of a circulatory enhancement ingredient, and an effective amount of a prolonged moisturization ingredient, wherein the anti-inflammatory ingredient includes aloe vera gel and pantothenic acid and the moisturizing ingredient includes sorbitol and glycerin.

The remaining references cited by the Examiner do not suggest the elements of the instant claims when combined with Robinson et. al. Yokoyama et al. discloses a skin treatment comprising a unicellularized plant which may also be used in combination with other ingredients. Albacarys et al. discloses a disposable, single use cleansing article which may be used to deliver a variety of skin care actives. Fuller discloses a skin lightening composition that includes yohimbine, and Wenker teaches combining aloe vera gel in a specific moisturizing composition with glycerin, beeswax, sodium carrageenan, titanium dioxide, tincture of iodine, melaleuca alternifolia and a fragrance. Again, none of these discloses a formulation, in one or two phases, containing the particular ingredients or types of ingredients in the instant claims.

Applicant recognizes that the intended function of a compound does not limit a composition claim, so that if a prior art reference were to include all the elements of one of Applicant's claims, the claim would be anticipated. Applicant also understands that, as in In re Kerkhoven, combining two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose, is prima facie obvious. But in that case, the ingredients were two conventional spray-dried detergents, combined to form a spray-dried detergent. By contrast, the prior art cited here by the Examiner (and by Applicant) discloses thousands of dermatologically acceptable ingredients classifiable in dozens of functional classes, many of which might work synergistically together while others might counteract each other. The number of available combinations thus runs at least into the thousands, and nothing in the cited art suggests combining references and looking for the combinations chosen by the Applicant. Consequently, a case for obviousness is not made out. See Ruiz v. A.B. Chance Co., 234 F.3d 654, 57 USPQ2d 1161.

Respectfully submitted,



Joseph W. Mott
Reg. No. 35,621
Jennings, Strouss & Salmon, P.L.C.
201 E. Washington St. – 11th Floor
Phoenix, Arizona 85004-2393
(602) 262-5866